

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

IN RE PLUG POWER, INC. STOCKHOLDER
DERIVATIVE LITIGATION

Master File No. 1:23-cv-01007-JLH

STIPULATION AND [PROPOSED] ORDER TO STAY DERIVATIVE ACTION

Plaintiffs Peter Trappen (“Trappen”), Elias Levy (“Levy”), Camerohn X. Withers (“Withers”), Denish Bhavsar (“Bhavsar”), and Samhita Gera (“Gera” and collectively with Trappen, Levy, Withers, and Bhavsar, “Plaintiffs”), nominal defendant Plug Power Inc. (“Plug Power” or the “Company”) and defendants Andrew Marsh, Paul B. Middleton, David Mindnich, Martin D. Hull, George C. McNamee, Gary K. Willis, Maureen O. Helmer, Gregory Kenausis, Kyungyeol Song, and Kavita Mahtani (with Plug Power, “Defendants”), by and through their undersigned counsel, hereby stipulate to the following:

WHEREAS, on September 13, 2023, plaintiff Trappen filed a verified stockholder derivative complaint in this Court on behalf of Plug Power against certain individual Defendants (the “Trappen Action”);

WHEREAS, on November 2, 2023, plaintiffs Levy and Withers filed a verified stockholder derivative complaint in this Court on behalf of Plug Power against the individual Defendants (the “Levy Action”);

WHEREAS, on December 14, 2023, the Court entered an Order consolidating the Trappen Action and the Levy Action for all purposes under Lead Case No. 1:23-cv-01007-MN (the “Consolidated Action”) and appointed Lifshitz Law PLLC (“Lifshitz Law”) and Gainey McKenna & Egleston (“GME”) as Co-Lead Counsel for plaintiffs in the consolidated action (the “Consolidation Order”). *See* Dkt No. 5;

WHEREAS, on October 27, 2023, plaintiffs Bhavsar and Gera filed a verified stockholder derivative complaint in the United States District Court for the Southern District of New York (the “Southern District of New York”) on behalf of Plug Power against the individual Defendants (the “Bhavsar Action”);

WHEREAS, on January 25, 2024, the Bhavsar Action was transferred from the Southern District of New York to this Court, and on March 8, 2024, the Court consolidated the Bhavsar Action into the Consolidated Action for all purposes;

WHEREAS, pursuant to the terms of the Consolidation Order, the Defendants “shall not be required to respond, plead, move, answer, or otherwise respond to the existing complaints or to the complaints in any other actions that are filed in, or subsequently transferred, to this Court and consolidated in this action.” *See* Dkt. No. 5, at ¶ 7;

WHEREAS, there is currently pending in this Court a purported securities class action filed on April 12, 2023, styled *In re Plug Power Inc. Securities Litigation*, Case No. 1:23-cv-00409 (the “Securities Class Action”);

WHEREAS, on September 28, 2023, an amended complaint was filed in the Securities Class Action;

WHEREAS, on December 14, 2023, defendants filed a motion to dismiss in the Securities Class Action;

WHEREAS, on March 13, 2024, briefing on the motion to dismiss in the Securities Class Action was completed;

WHEREAS, on April 12, 2024, the Court entered an Order requiring the parties to file a joint status report, and in connection with the preparation of that joint status report the parties have conferred regarding next steps for the Consolidated Action; and

WHEREAS, in light of the similarities between the claims asserted in the Consolidated Action and the claims asserted in the Securities Class Action, and in light of the motion to dismiss in the Securities Class Action, to conserve the parties' and judicial resources and to promote "the just, speedy, and inexpensive determination of [this] action," Fed. R. Civ. P. 1, Plaintiffs and Defendants (the "Parties") have agreed, subject to the approval of the Court, that all proceedings in the Consolidated Action, including discovery and Defendants' obligation to move, answer, or otherwise respond to the complaints, should be stayed pending final resolution of the motion to dismiss in the Securities Class Action;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, subject to the approval of the Court, as follows:

1. All proceedings and deadlines in the Consolidated Action, including pleadings, motion practice, conferences, and discovery are stayed until final resolution of motions to dismiss in the Securities Class Action.
2. During the pendency of the stay, Defendants need not respond to any complaint in the Consolidated Action; all applicable deadlines shall be postponed; and neither Plaintiffs nor Defendants shall later argue that the stay has prejudiced their position in this case.
3. The pendency of the stay shall not preclude Plaintiffs from filing a consolidated amended complaint, provided that Defendants will have no obligation to file any answer, motion, or other response to any such consolidated amended complaint while the stay remains in effect.
4. During the pendency of the stay, Defendants shall promptly notify Plaintiffs if a related derivative lawsuit is not stayed for the same duration as the Consolidated Action.
5. Any of the Parties to this Stipulation may lift the stay by giving the other party fourteen (14) days' notice in writing and filing the notice with the Court.

6. Once a decision is issued on the motion to dismiss in the Securities Class Action, or upon a Party's termination of the stay pursuant to paragraph 5, the Parties shall meet and confer and file a proposed schedule within fourteen (14) days addressing (i) the deadline to file a consolidated amended complaint (or designation of an operative complaint), (ii) the deadline for Defendants to answer, move, or otherwise respond to such complaint, and (iii) the schedule for briefing if Defendants respond to the complaint by motion.

7. By entering into this Stipulation, the Parties do not waive any rights not specifically addressed herein. The Parties expressly preserve, and do not waive, any and all claims, rights, procedural remedies, and defenses, and arguments in this Action, except as to the absences of a summons or of service.

Dated: April 19, 2024

By: /s/ Brian D. Long
LONG LAW, LLC
Brian D. Long (Bar No. 4347)
3828 Kennett Pike, Suite 208
Wilmington, DE 19807
Telephone: (302) 729-9100
Email: bdlong@longlawde.com

LIFSHITZ LAW PLLC
Joshua M. Lifshitz
1190 Broadway
Hewlett, NY 11557
Telephone: (516) 493-9780
Facsimile: (516) 280-7376
Email: jlifshitz@lifshitzlaw.com

Co-Lead Counsel for the Consolidated Action

By: /s/ Ryan M. Ernst

BIELLI & KLAUDER, LLC

Ryan M. Ernst (Bar No. 4788)
1204 N. King Street
Wilmington, DE 19801
Telephone: (302) 321-5411
Email: rernst@bk-legal.com

GAINEY McKENNA & EGLESTON

Gregory M. Egleston
Thomas J. McKenna
260 Madison Avenue, 22nd Fl.
New York, NY 10016
Telephone: (212) 983-1300
Facsimile: (212) 983-0383
Email: egleston@gme-law.com
Email: tjmckenna@gme-law.com

Co-Lead Counsel for the Consolidated Action

By: /s/ Ronald N. Brown

DLA PIPER LLP (US)

Ronald N. Brown, III (Bar No. 4831)
1201 North Market Street, Suite 2100
Wilmington, Delaware 19801
Telephone: (302) 468-5700
Email: ronald.brown@us.dlapiper.com

Counsel for Plug Power Inc.

By: /s/ Jason J. Rawnsley

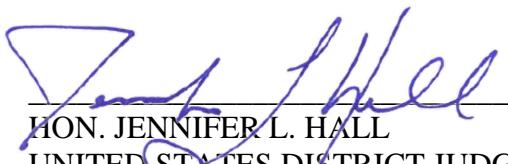
RICHARDS, LAYTON & FINGER, P.A.

Rudolf Koch (Bar No. 4947)
Jason J. Rawnsley (Bar No. 5379)
One Rodney Square
920 North King Street
Wilmington, Delaware 19801
Telephone: (302) 651-7700
Email: koch@rlf.com
Email: rawnsley@rlf.com

Counsel for the Individual Defendants

SO ORDERED.

DATED: April 26, 2024



HON. JENNIFER L. HALL
UNITED STATES DISTRICT JUDGE